



June 18, 2001

Ms. Kristi LaRoe  
Assistant District Attorney  
Tarrant County  
401 West Belknap  
Fort Worth, Texas 76196-0201

OR2001-2587

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148552.

The Tarrant County District Attorney (the "district attorney") received a written request for various records pertaining to a number criminal prosecutions contained in a list provided by the requestor. You indicate that most of the requested information will be made available to the requestor. You contend, however, that certain other requested records are excepted from public disclosure pursuant to sections 552.101, 552.108, and 552.111 of the Government Code. We will discuss each of the exhibits you seek to withhold in turn.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You inquire whether Exhibit C, a "Work List of Jurors," is made confidential under article 35.29 of the Code of Criminal Procedure. Article 35.29 provides as follows:

Information collected by the court or by a prosecuting attorney during the jury selection process about a person who serves as a juror, *including the juror's home address, home telephone number, social security number, driver's license number, and other personal information*, is confidential and may not be disclosed by the court, the prosecuting attorney, the defense counsel, or any court personnel except on application by a party in the trial or on application by a bona fide member of the news media acting in such capacity

to the court in which the person is serving or did serve as a juror. On a showing of good cause, the court shall permit disclosure of the information sought. [Emphasis added].

Article 35.29 makes confidential certain personal information pertaining to only those individuals who actually served on the petit jury in a criminal trial. This provision does not, however, make confidential the names of such individuals. After reviewing Exhibit C, we conclude only the portions of this document that reveal the petit jurors' city of residence and zip code are made confidential under article 35.29. The district attorney must release the remaining portions of Exhibit C.

Exhibits D and E consist of psychological evaluations of criminal defendants. You contend that these documents are made confidential under chapter 611 of the Health and Safety Code. Section 611.002 of the Health and Safety Code applies to "[c]ommunications between a patient and a professional, [and] records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional." *See also* Health & Safety Code § 611.001 (defining "patient" and "professional"). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). We agree that Exhibit D is confidential under section 611.002 and may be released only in accordance with the access provisions of that chapter. Health & Safety Code § 611.002(b); *see id.* §§ 611.004, 611.0045.<sup>1</sup>

We note, however, that attached to Exhibit E is the defendant's written waiver of confidentiality with regard to the psychological examination. *See* Health & Safety Code § 611.006(a)(3). We additionally note that this evaluation was filed with the district clerk in connection with the criminal prosecution of the defendant. Assuming there is no court order restricting the subsequent release of this information to the public, *see* Health & Safety Code § 611.006(b), we conclude that if the district attorney determines that the waiver is valid, the waiver and the psychological examination contained in Exhibit E must be released to the requestor.

Finally, you seek to withhold Exhibit F, an internal memorandum prepared by a prosecutor, pursuant to section 552.108(a)(2) of the Government Code, which excepts from required public disclosure "[i]nformation held by a law enforcement agency . . . that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." The internal memorandum discusses the reasons for the dismissal of the criminal prosecution. Assuming that this criminal case

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<sup>1</sup>Because we were able to make a determination under chapter 611 of the Health and Safety Code, we need not address your additional arguments against disclosure.

in fact was dismissed, we conclude that the district attorney may withhold Exhibit F in its entirety pursuant to section 552.108(a)(2).<sup>2</sup>

In summary, the district attorney must release to the requestor the "Work List of Jurors" except information that reveals the petit jurors' city of residence and zip codes. The district attorney must also release Exhibit E, the psychological examination accompanied by a waiver of confidentiality. The district attorney must, however, withhold the psychological evaluation submitted as Exhibit D. Finally, the district attorney is authorized to withhold pursuant to section 552.108(a)(2) the internal memorandum submitted as Exhibit F.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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<sup>2</sup>Because we resolve this aspect of your request under section 552.108, we need not address the applicability of section 552.111 to this information.

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cindy Nettles".

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/RWP/seg

Ref: ID# 148552

Enc. Submitted documents

c: Ms. Liz Stevens  
Fort Worth Star-Telegram  
400 West 7<sup>th</sup> Street  
Fort Worth, Texas 76102  
(w/o enclosures)